ORIGINAL EXPRESSION SDN BHD A

v.

CHEONG JUAN HAI

HIGH COURT MALAYA, SEREMBAN B
ABDUL ALIM ABDULLAH J
[ORIGINATING SUMMONS NO: 24-903-2007]
3 DECEMBER 2008

LAND LAW: *Caveat - Removal of - Application for - Whether shareholder has caveatable interest in properties belonging to company - Whether application allowed* C

This was an action by the plaintiff to remove the private caveat entered by the defendant over a piece of land belonging to the plaintiff in which she was a shareholder. The issue that arose was whether the defendant being a purchaser of shares in the plaintiff company had any caveatable interest over the said company's land. Briefly, the plaintiff owned a piece of land and in pursuance of a sale and purchase agreement, the defendant bought the entire 1,210,087 paid up shares from the plaintiff's two shareholders for a purchase price of RM2,300,000. In order to protect the defendant's interest, she entered a private caveat over the said land. In this action, the plaintiff sought to remove the caveat on the ground that the defendant had failed to pay the purchase price in full which the plaintiff contended should be RM4,800,000 which was the amount stated in the Memorandum of Undertaking executed prior to the Shares Sale Agreement. The defendant, on the other hand, contended that the purchase price was RM2,300,000 and had been paid in full pursuant to the Shares Sale Agreement. D E F G

Held (allowing plaintiff's action to remove caveat):

(1) A shareholder of a company does not have any caveatable interest in the properties belonging to the company. The defendant herein had lodged a caveat to protect her own personal interest. The defendant merely purchased some shares in the company. The defendant did not buy any land from the company. As such the defendant clearly did not have any interest, legal or equitable in the land. The defendant did not have any caveatable interest in the land belonging to the company. The defendant was merely attempting to protect her H I

A contractual interest to purchase shares in the plaintiff company. But that was flawed in its entirety, and misconceived from head to foot. (paras 9, 12 & 15)

Case(s) referred to:

B *Chan Foo Meng & Ors v. Hup Seng Co Ltd [1987] 2 CLJ 430; [1987] CLJ (Rep) 523 HC **(refd)***

*Fawziah Holdings Sdn Bhd v. Metramac Corporation Sdn Bhd & Another Appeal [2006] 1 CLJ 996 CA **(refd)***

*Hew Sook Ying v. Hiw Tin Hee [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120 SC **(refd)***

C

For the plaintiff - Manian Raju (Zatul Izzra with him); M/s Krishnan Dallumah, Manian & Indran

For the defendant - CC Choo; M/s CC Choo, Hazila & Teong

Reported by Suhainah Wahiduddin

D

JUDGMENT

Abdul Alim Abdullah J:

E

[1] This is an action by the plaintiff to remove the private caveat entered by the defendant over a piece of land belonging to the plaintiff in which she is a shareholder.

F **[2]** Central to the issue herein simply is whether the defendant being a purchaser of shares in the plaintiff company has any caveatable interest over the said company's land.

Facts Of The Case

G **[3]** The plaintiff owns a piece of land held under H.S.(D) 23624 No. P.T. Pasir Panjang, Daerah Port Dickson.

[4] In pursuance of a sale and purchase agreement dated 12 December 2004 the defendant bought the entire 1,210,087 paid-up shares from the plaintiff's two shareholders for a purchase H price of RM2,300,000.

[5] In order to protect the defendant's interest, she entered a private caveat over the said land on 28 July 2003.

I **[6]** In this action the plaintiff is seeking to remove the caveat on the ground that the defendant has failed to pay the purchase price in full which the plaintiff has contended that it should be

RM4,800,000 which was the amount stated in the memorandum of undertaking which was executed prior to the shares sale agreement. The defendant on the other hand contended that the purchase price is RM2,300,000 and has been paid in full pursuant to the shares sale agreement.

[7] The plaintiff in this action seeks to remove the private caveat under the National Land Code 1965.

[8] No legal action has been taken by the defendant since she had lodged the private caveat on 28 July 2003, a lapse of 3 1/2 years.

The Law

[9] After hearing submissions by both counsel, this court ruled that a shareholder of a company does not have any caveatable interest in the properties belonging to a company. *Cadit quaestio*. This court then sees no relevance in considering issues of balance of convenience or maintaining the *status quo* of parties.

[10] Some very useful authorities can put to rest the anxieties of the defendant. In *Hew Sook Ying v. Hiw Tin Hee* [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120 Mohamed Azmi SCJ (as he then was) said:

> It is a well established principle of law that a limited company incorporated under the Companies Act 1965 and the individuals forming the company are **distinct legal entities**, however completely in control it might be by one or more individuals of the company (see *Salomon v. Salomon Co Ltd*, and also *Tunstall v. Steigmann*). Any departure from a strict adherence of the principle has only been made to deal with special circumstances where a limited company might well be a facade conceding the real facts behind the corporate veil. ...
>
> In such circumstances, *it is impossible to envisage how the managing director either personally or as a shareholder or as an officer of the company, can be said to have a caveatable claim to tittle or registrable interest under Section 323(i) merely because of internal squabbles between him and certain directors of the company*.
>
> (Emphasis added)

[11] Some further useful authorities were quoted in *Chan Foo Meng & Ors. v. Hup Seng Co Ltd* [1987] 2 CLJ 430; ([1987] CLJ (Rep) 523) by Mohamed Dzaiddin JC (as he then was). He said at p. 432 (p. 525):

A ... *Short v. Treasury Commissioners* ([1948] AC 534) Evershed L.J. p. 122. The right of the shareholders is succinctly explained by Lord Porter in *Short*'s case in the House of Lords at p. 545 where he said:

> In the case of land the owner possessed a tangible asset whereas a shareholder has no direct share in the assets of a Company, he has such rights as the Memorandum and Articles given him and nothing more.

In *Macaura v. Northern Assurance Co. Ltd.* [1925] AC 534 it was held that the sole shareholder in a Company, who was also its main creditor, had no insurable interest in the property of the Company. Lord Buckmaster said, *ibid*, 626:

> Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the Company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

In *E.B.M. Co. Ltd, v. Dominion Bank* [1937] 3 All ER 555 Lord Russell, giving the advice of the Privy Council, rejected the suggestion that the assets of a company might in substance be regarded as the assets of the three individuals who constituted its main shareholders. He said that it was 'of supreme importance that the distinction should be clearly marked, observed and maintained between an incorporated company's legal entity and its actions, assets, rights and liabilities on the one hand, and the individual shareholders and their actions, assets, rights and liabilities on the other hand'.

[12] It has to be reminded here that the defendant in the instant case has lodged a caveat to protect her own personal interest. The defendant merely purchased some shares in the company. The defendant did not buy any land from the company. As such the defendant clearly does not have any interest, legal or equitable in the land. The defendant does not have any caveatable interest in the land belonging to the company. Her Form 19B of the National Land Code 1965, *inter alia* reads:

> Sementara menunggu pendaftaran syer-syer syarikat itu, saya memasukkan kaveat ini untuk melindungi kepentingan saya dalam hartanah tersebut.

[13] Another useful authority need be mentioned here. In *Fawziah Holdings Sdn. Bhd. v. Metramac Corporation Sdn. Bhd. & Another Appeal* [2006] 1 CLJ 996 Gopal Sri Ram JCA said at p. 1010:

> This answer overlooks the most elementary principle of the company law. It is this. The shareholders of a company have no interest, legal or equitable, in the assets of their company (see *Law Kam Loy v. Boltex Sdn. Bhd.* [2005] 3 CLJ 355.
>
> In the context, it is clearly wrong to treat even a private limited company with only two shareholders any different from any other company.

[14] Loh Siew Cheang in his book *Corporate Powers Accountability* (2nd edn) states the following:

> The corporate person.
>
> In *Macaura v. Northern Assurance Co. Ltd*, Mr. Macaura was the owner of a timber estate and he sold it to a company in exchange for shares. He became the sole shareholder and the company was his debtor in a considerable sum. He insured the timber of the company but in his own name. A large portion of the timber was destroyed by fire. Mr. Macaura made a claim against the insurance company which refused to pay on the ground that Mr. Macaura had no insurable interests. On appeal, Lord Buckmaster said:
>
> > It is true that the timber was owned by the company, but practically the whole interest in the company was owned by the appellant. He would receive the benefit of any profit and on him would fall the burden of any loss. But the principles on which the decision of this case rests must be independent of the extent of the interest held ... Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

[15] It is without doubt that the defendant was merely attempting to protect her contractual interest to purchase shares in the plaintiff company. But that is flawed in its entirety, and as rightly put by the plaintiff's counsel, misconceived from head to foot.

[16] The plaintiff's action to remove the caveat was therefore allowed with costs.